OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-014

May 28, 2026

Department of Government Services

Summary: The Department of Government Services received an access request for internal communications related to statute-barred or potentially statute-barred Income Support overpayment debts; debt enforceability or limitation periods; screening or verification of debts prior to collection actions or referral to the Canada Revenue Agency; and issues, findings, or concerns raised by the Office of the Auditor General regarding older debts. The Department responded by providing partial access to the records, but withheld some information, citing the exceptions to access in sections 29 (policy advice and recommendations), 30 (legal advice), 40 (disclosure harmful to personal privacy) and 41 (statutory office). This Report concluded that the Department had appropriately applied the exceptions under sections 29, 30, and 40, and that the records previously withheld under section 41 should continue to be withheld under s. 30(2) of the Auditor General Act, 2021.

Statutes Cited: Access to Information and Protection of Privacy Act, 2015, SNL 2015, c A-1.2, sections 7, 9, 29, 30, 40, 41 and Schedule A.

House Of Assembly Accountability, Integrity And Administration Act, SNL 2007, c. H-10.1, section 2(r).

Auditor General Act, 2021, SNL 2021, c A-22.1, sections 2 and 30.

Authorities Cited: NL OIPC Report A-2025-023,

Mastropietro v. Newfoundland and Labrador (Education), 2016 NLTD(G) 156

BACKGROUND

[1] The Complainant made an access request to the Department of Government Services under the **Access to Information and Protection of Privacy Act, 2015** (the "**Act**") for the following:

> I am requesting access to existing internal communications held by Government Services (Collections Services). Timeframe: January 1, 2022, to the date this request is received. Custodians (by position or individual): Director of Collections Services [Name 1] Collections Services Manager(s) [Name 2] Collections Officer(s) [Name 3] Team Lead(s) (including [Name 3]) Record Types: Emails, internal memos, and briefing notes. Subject Matter (limited to the following): statute-barred or potentially statute-barred Income Support overpayment debts; debt enforceability or limitation periods; screening or verification of debts prior to collection actions or referral to the Canada Revenue Agency; issues, findings, or concerns raised by the Office of the Auditor General regarding older debts. This request is limited to records that already exist and does not require the creation of new records or analysis. This request excludes: duplicate copies of the same record, and emails unrelated to the above subject matter. Where records contain personal information, I am requesting disclosure with severance in accordance with ATIPPA.

[2] The Department responded by providing partial access to the records, but withholding some information, citing sections 29, 30, 40, and 41 of ATIPPA, 2015.

[3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act. Information and Privacy Commissioner Kerry Hatfield delegated authority for this matter to me, as Director of Research and Quality Assurance, pursuant to section 103 of ATIPPA, 2015.

PUBLIC BODY'S POSITION

[4] The Department maintains that it appropriately withheld information under sections 29, 30, 40, and 41. The Department also maintains that a reasonable search was conducted and there are no further responsive records.

COMPLAINANT'S POSITION

[5] The Complainant asserts the Department failed to conduct a reasonable search for records and improperly applied exceptions to access.

[6] The Complainant also argues, in relation to section 9, that the public interest in disclosure of the information outweighs the reason for the exception under section 29(1)(a) and 30.

ISSUES

[7] The issues to be addressed in this Report are:

a. whether a reasonable search for records was conducted;
b. whether the Department properly applied section 29, 30, 40 and 41 of the Act; and
c. the application of the public interest override in section 9.

DECISION

Section 13(1) – Duty to Assist

[8] A public body's duty to assist has three components:

1. the public body must assist an applicant in the early stages of making a request,
2. it must conduct a reasonable search for the requested records, and
3. it must respond to the applicant in an open, accurate and complete manner.

[9] As stated by this Office in previous reports, a reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. The standard is not perfection, but one of reasonableness.

[10] The Complainant was concerned that the initial search for records may not have fully captured all areas of the request, namely the Department's own internal records pertaining

to the Auditor General Report. During informal resolution efforts, the public body conducted another search for the public body's own internal communications. This secondary search focused on records relating to discussions among employees within the Department of Government Services about "issues, findings or concerns raised by the Office of the Auditor General regarding older debts".

[11] The Department conducted additional searches of its internal email accounts and records management system using the keywords "Auditor" and "General" for the period February 26, 2025 to December 13, 2025. This timeframe captures both the release of the Auditor General's Report and the receipt of the Complainant's access request. To ensure a complete search, the parameters were broadened to include one day prior to and one day following the specified dates. The searches did not yield any responsive records.

[12] The Department assisted the Complainant in determining where additional records may exist, noting the recommendation in the Auditor General's Report referenced in the Complainant's request was directed to the Department of Social Supports and Well-Being.

[13] Based on the searches conducted by staff who are knowledgeable about these types of records, the locations searched and the type of records located, I conclude that Department conducted a reasonable search for records.

Section 29(1)(a)

[14] Section 29(1)(a) of the Act provides:

> 29(1) The head of a public body may refuse to disclose to an applicant information that would reveal
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> (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister; has been applied to withhold information that includes policy advice, and recommendations.

[15] Determining the correct application of this section requires consideration of its purpose. This exception is intended to provide public servants with a "safe space" in which to hold discussions or debates around courses of action and to provide advice or recommendations

about policy or procedural matters, without being concerned that their views and opinions will be made public.

[16] Section 29(1)(a) is a discretionary exception. Where the public body can demonstrate the records in question fall within the description of the section, the public body is permitted to withhold information pursuant to that section.

[17] Based on our review of the records and the Department's submissions, we have concluded that section 29 has been properly applied.

[18] The Complainant argued that there is no evidence that the public body considered the application of the public interest override in section 9 of the Act, to the information withheld under section 29(1)(a). In its submissions the Department asserted that the public interest in maintaining a confidential space for policy formulation outweighs any public interest in the disclosure of these records.

[19] While the Public Body must show it considered section 9, the complainant bears the burden of demonstrating that the public interest outweighs the purpose of the exception, although that burden has been acknowledged by the Court in Mastropietro as a "relaxed" burden. This burden has not been met and the public interest override in section 9 does not apply.

Section 30

[20] To withhold records pursuant to section 30(1), the record in question must meet the following three conditions:

1. The record must be a communication between a solicitor acting in a professional capacity and a client;
2. The communication must entail the seeking or giving of legal advice; and
3. The communication must be intended to be confidential.

[21] In light of current jurisprudence which removes the right of this Office to compel production of solicitor client records, the Department exercised its discretion in declining to provide this

Office with such records. However, the Department did provide information sufficient for this Office to make a determination that, on a balance of probabilities, the records were properly withheld.

[22] The Complainant has argued that there is no evidence that the public body considered the application of the public interest override in section 9 to the exception in section 30. In Report A-2025-023 we noted that the application of section 9 to the exception for legal advice would require clearing a very high bar, since it has been stated in several court decisions that the privilege is close to absolute. The burden to show that the public interest in the release of the information would override the purpose of the exception has not been met in this case.

Section 40(1)

[23] Section 40(1) of **ATIPPA, 2015** states as follows:

> 40.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

[24] Only one instance of section 40(1) (personal information), appears within the records and consists of personal information about an individual other than the Complainant. Upon review of the records we are satisfied that the application of section 40 to the withheld information is appropriate.

Section 41(c)

[25] The Department withheld approximately 10 pages of records related to the Auditor General under section 41(c) which states:

> 41. The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information
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> [...]
>
> (c) in the case of a statutory office as defined in the **House of Assembly Accountability, Integrity and Administration Act**, records connected with the investigatory functions of the statutory office

[26] Section 2(r) of the **House of Assembly Accountability, Integrity and Administration Act** specifies the statutory bodies to which section 41(c) of the **ATIPPA, 2015** applies:

> 2(r) "statutory office" means the office and administrative staff directly serving the
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> (i) Chief Electoral Officer,
> (ii) Commissioner for Legislative Standards,
> (iii) Child and Youth Advocate,
> (iv) Information and Privacy Commissioner,
> (v) Citizens' Representative,
> (v.1) Seniors' Advocate, and
> (vi) other offices of the House of Assembly, with the exception of the office of the Auditor General, that may be established under an Act; and

[27] The Auditor General is specifically excluded from the definition of "statutory office", therefore section 41(c) cannot be applied to these records.

[28] That is not the end of the story, however. The **Auditor General Act, 2021** contains a provision which exempts audit working papers from disclosure under **ATIPPA, 2015.** Having reviewed the records, this Office can confirm that they fall within the scope of "audit working papers" as defined by the **Auditor General Act, 2021**. Section 30(2) of that Act states:

> 30(2) The Access to Information and Protection of Privacy Act, 2015 does not apply to the disclosure of audit working papers.

[29] "Audit working papers" is defined in the **Auditor General Act, 2021** as follows:

> 2(1)(e) "audit working papers" include draft reports and all other documents which record the planning of, execution of and the evidence obtained during an audit;

[30] This creates a potential conflict between the two Acts, with one prohibiting disclosure and one potentially allowing release of the same records.

[31] That brings us to section 7 of **ATIPPA, 2015** which deals with conflict with other Acts.

> **7.** (1) Where there is a conflict between this Act or a regulation made under this Act and another Act or regulation enacted before or after the coming into force of this Act, this Act or the regulation made under it shall prevail.

> (2) Notwithstanding subsection (1), where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over this Act or a regulation made under it.

[32] Section 30(2) of the **Auditor General Act, 2021** is designated in Schedule A of **ATIPPA, 2015** and therefore, in accordance with section 7(2) of **ATIPPA, 2015**, it prevails over any potential disclosure otherwise required by **ATIPPA, 2015**. Having concluded that the records at issue meet the definition of "audit working papers" and that **ATIPPA, 2015** does not apply to the disclosure of such records, the Department may continue to withhold the records.

RECOMMENDATIONS

[33] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Government Services continue to withhold the records.

[34] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of the Department of Government Services must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[35] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28th day of May 2026.

Sean Murray
Sean Murray
Director of Research and Quality Assurance
Office of the Information and Privacy Commissioner
Newfoundland and Labrador